

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2185 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINABEN J BHATT

Versus

DEPUTY COLLECTOR

Appearance:

MR PV NANAVATI for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 21/03/2000

ORAL JUDGEMENT

The petitioners by filing this petition have
challenged the jurisdiction of the respondent in passing
the impugned order Annexure B on 28.2.1989.

2. One Co-operative Society named as Nutan Shaktinagar Co-op. Housing Society Limited (hereinafter referred to as the Society) was constituted under the provisions contained in the Gujarat Co-op. Societies Act. The petitioners were enrolled as members of the said society. It appears that the society could not accommodate the petitioners and therefore the said society purchased a piece of land bearing Final Plot No. 179 of Town Planning Scheme No. 24 of Khokhra, Ahmedabad. The petitioners were put in possession of 4 plots out of the said piece of land. The cooperative society of the petitioners entered into agreement i.e. release deeds within the petitioners. The society under the said agreements released the benefits in favour of the petitioners without any consideration whereby the right, title and interest including the possession with respect to the land were recognised in favour of the petitioners. The said release deeds were registered with the Registrar of Ahmedabad on 10.1.85. Mutation entries were made in the relevant record i.e. Village Form No. VI as well as Form No. VII & XII for all the plots except for one.

3. One Ochavhlal Muljibhai who was a member of the society and who was allotted final plot no.179 also submitted an application for mutation entry in his name pursuant to the execution of the release deed on 10.1.85. Said Ochavhlal Muljibhai Patel made an application to the City Mamlatdar stating that the name should be mutated in Village Form No. VI as well as VII and XII and entry should be certified. However, that request was rejected on 5.9.86. The matter was carried in appeal under the provisions contained rule 108(6) of the Bombay Land Revenue Code. During the pendency of the appeal, said Ochavhlal M Patel expired and therefore his son Sharad O Patel was brought on record. As the appeal was dismissed, the matter was carried in revision before the Collector, who after hearing the parties observed that there was no transfer as recorded in the order of City Dy. Collector as the release deed is not a transfer and therefore the City Dy. Collector should reconsider his decision. It appears that thereafter notices were issued vide Annexure B collectively by respondent no.2 stating that why mutation entries made in favour of all the petitioners should not be cancelled as the release deeds amounted to transfer. In reply thereto it was pointed out that entries were made in accordance with law (vide Annexure B dated 1.4.1985.)

4. Learned Counsel submitted that the entries were certified on 1.4.85 and entries have become conclusive

and after lapse of about 4 years no action can be taken under the provisions contained in the Bombay Land Revenue Code. It is further contended that the release deeds did not amount to transfer as the same were in favour of members of the society. The society could not accommodate them, the land was purchased in the name of the society for allotment in favour of petitioners and thereafter the said release deeds were executed in favour of the petitioners.

5. Without examining the contention that the document would amount to transfer or not, the matter is required to be disposed of on a ground of the exercise of powers after undue delay. It is required to be noted that after purchase of the land, the society handed over possession of the plots to the petitioners, they developed the said plots, they constructed their house and are residing there since then. If within a reasonable period action would have been taken, the question would have been quite different. The Apex Court in the case of State of Gujarat V/s. Patel Raghav Natha & Ors. reported in 10, GLR 992 has pointed out that within reasonable time action should be taken.

6. In Para 12 & 13, the Apex Court has observed as under:-

"12. The question arises whether the Commissioner can revise an order made under sec. 65 at any time. It is true that there is no period of limitation prescribed under sec. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

13. It seems to us that sec. 65 itself indicates the length of the reasonable time within which the Commissioner acts under sec. 211. Under sec. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading secs. 211 and 65 together

it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money of starting building operations atleast within a few months of the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e., more than a year after the order, and it seems to us that this order was passed too late."

7. No reply is filed on behalf of the respondents till this date. The Collector held that the release deed is registered and the said document is not a document of sale of property. However, the Deputy Collector passed the impugned order holding that the release deed is sale deed. As a matter of fact, the Collector while deciding the appeal pointed out that entires with regard to other plots have been made in the revenue record where change of use is also noted and the entry was not made with regard to one plot. The authority exercised the revisional jurisdiction after lapse of about four years from passing an order with regard to the plots for which release deeds were executed. Thus, the powers having not been exercised within reasonable period order is required to be quashed. Therefore only on this solitary ground, the petition is required to be allowed. The order passed by the City Dy. Collector (vide Annexure D) is hereby quashed and set aside. Rule made absolute. No order as to costs.

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